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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17.02.2020

+ BAIL APPLN. 3072/2019

PARAMJEET SINGH

..... Petitioner

Through Mr.Vikas Gautam, Adv.

versus

STATE

..... Respondent

Through Mr.Hirein Sharma, APP for State.
SI Parveen Kumar Special Cell.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CrI.M.A. 3639/2020

1. In view of the reasons stated in the present petition, the application is allowed and disposed of.

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2. The present petition is filed under section 439 of Cr.P.C. on behalf of the petitioner for grant of regular bail in FIR No.45/2015 registered at Police Station Special Cell for the offences punishable under sections 21/29 of NDPS Act.

3. Case of the prosecution is that on 28.06.2015, an information was received by the officials of Special Cell through the secret informer that one Sikh person namely Paramjeet Singh (Petitioner herein) resident of Shiv Vihar, Delhi would be coming to take bus from Delhi to Ludhiana from Red Fort between 10.00 to 10.30 PM and he would be carrying consignment of Heroin for delivering the same in Ludhiana. It is also alleged that SI Rakesh Kumar informed Inspector Attar Singh about the above information. Above named Inspector further informed about the above information to ACP, who in turn authorized him to conduct raid. It is alleged that SI Rakesh Kumar raided the spot i.e. near Chhata Rail Red light, near Red Fort, Delhi and apprehended Petitioner with blue colour 'Theli'. Accordingly, SI Rakesh Kumar served Notice under Section 50 NDPS Act informing the petitioner about his rights to be searched in the presence of Gazetted Officer or Magistrate. After obtaining denial of Petitioner on the notice under section 50 NDPS Act in securing the presence of Gazetted Officer or Magistrate, the officials allegedly conducted search of Kurkure Ki blue colour theli. It is further alleged that in search of said Kurkure Ki theli, the officials recovered and seized 1.5 Kg of Heroin after drawing sample.

4. It is not in dispute that petitioner is in judicial custody since

29.06.2015 and only 13 witnesses have been examined till date.

5. Learned counsel for the petitioner submits that as per the alleged recovery, the powder which was recovered from the Petitioner was 1.5 kg out of which 11.40% (i.e. 171 grams) was Heroine, as per FSL report dated 06.08.2015.

6. Learned APP submits that as per the notification of 2009, it is the total quantity which is to be taken into consideration and not the percentage of substance.

7. As per the recent judgment passed by this Court in the case of '*Sandeep Kumar vs. Central Bureau of Narcotics*', decided on 08.07.2019, 2019 Lawsuit (DEL) 2001, after appreciating the law laid down by the Hon'ble Supreme Court in '*Rafiq Qureshi vs. NCB, Eastern Zonal Unit*', decided on 07.05.2019, 2019 Lawsuit (SC) 1179, the Court adjudicated the matter on the basis of purity percentage available in the contraband.

8. Moreover, similar issue has been dealt by this Court in case of *Raju Diwarkar @ Pappu Vs. State* in Bail Application No. 44/2020, decided on 13.02.2020. Present case is squarely covered by the orders passed in above cited cases.

9. Thus, total quantity of substance recovered from the petitioner is 1.5

kgs., out of which 11.40% (i.e. 171 grams.) was Heroin, which is intermediate quantity whereas the commercial quantity is 250 grams. Thus, there is no embargo of Section 37 NDPS Act in granting bail.

10. However, without commenting on merits of prosecution case as petitioner is in custody since 29.06.2015 also keeping in view the fact that purity of recovered contraband from petitioner is less than 250 grams, petitioner deserves benefit of the aforesaid judgment.

11. Accordingly, he shall be released on bail on his furnishing personal bond of ₹20,000/- with one surety each of the like amount to the satisfaction of the Trial Court.

12. Before parting with the order, it is relevant to mention that nothing contained in this order shall be construed as an expression on the merits of the case.

13. The present petition is, accordingly, allowed and disposed of.

14. Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for compliance.

15. Order *dasti* under the signatures of Court Master.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 17, 2020/ab